



File No. 81/53

Legal Department

To BRANCH

Subject:— Opinions
Cotton cloth & yarn
Control Order.

File No.

O/C C. & Y.C.O.

Gen. 194 e.

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Opinions under the Cotton

cloth and yarn control order.

1.) O.No. G- 538/5-9-53. Re: transport charges claim by
Diet. Industrial Association
Refusal to refund by Govt.

1-4.

MP
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K.S.R.
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1.
Legal Department.

R. L. A. is requested to advise whether the refund now claimed by Shri Mutha and the District Industrial Association, Satara, may be refused and whether in case they proceed against Government, the claim would be defensible.

Attention is invited to R.L.A.'s opinion No. G-613, dated the 12th December 1949 and No. G-511, dated the 22nd October 1951 wherein R.L.A. has expressed his view that Shri Mutha can successfully sue Government for repayment of the amount of excess freight. In the former opinion it was also stated that at the most Government can prosecute the parties for charging freight in excess of the amount actually paid by him in contravention of Textile Commissioner's Notification No. T.C. (17) 1/45, dated the 30th January 1945. It seems that thereafter one of the parties Shri Pawar as the Chairman of the Yarn Merchants Association, Karad was prosecuted for a similar offence. The Additional First Class Magistrate, Karad has discharged him on the 24th April 1953 on the following grounds:-

(1) the District Magistrate, Satara, by his letter dated the 10th January 1946 permitted the Association to recover the additional charges;

(2) the Textile Commissioner's Notification No. T.C. (2)21-44, dated the 30th May 1944, allowed the dealer to add sales tax, local cess, octroi duty

Contd.

and such other charges as the dealers may actually incur and therefore the Association charged the charges which were merely allowed by the Textile Commissioner;

(3) it was not proved by the prosecution that the accused who held ^{only} ~~Rs.~~ 0-2-9- share in the rupee was one of the principal officers responsible for the recovery of the extra charges.

The view taken by the learned Magistrate on the point of law (point 2 above) appears to be incorrect and Revision Application can lie to the High Court on that point. The notification that is quoted amends a prior notification of 1943 which deals with the fixing the maximum ex-factory and retail prices of cloth and markings on cloth and yarn. That notification has no application to the present case.

As regards the third point as the accused is discharged if the High Court orders retrial, the other partners or members of the Association can be joined as co-accused.

If however what is stated in the judgment regarding the District Magistrate allowing the Association (and incidentally other wholesalers) to levy extra charges is correct, then the offence would be technical and it would not be advisable to go in revision. The State Textile Controller's office may in the first instance be requested to verify this and forward all relevant correspondence for perusal to this Department. The period of limitation for a revision application would expire on 24th October 1953.

Contd.

'Freight' means properly the price or compensation paid for the transportation of goods by a carrier, at sea, from port to port; but ~~thnx~~ the term is also used to denote the hire paid for the carriage of goods on land from place to place (usually by a railroad company) (Black's Law Dictionary p. 814). Under the Textile Commissioner's Notification No. T.C.(17)1/48, dated the 30th January 1945 additional charges by way of freight were only allowed. The other charges such as godown rent, commission, dharmadaya cannot be included in that term.

If a suit is filed by Shri Mutha it would be indefensible as the excess is refundable to the persons from whom it is recovered and not to Government.

Sd/-

e/s

Secretary to Government.

U.R.to S.T.C., No. C- 538, dated the 5th
September 1953.

MM

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